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GENTLEMEN:

After mature reflection, and with the advice of others more experienced in such matters, I have determined, with the most respectful consideration, to address you in this manner, on the subject of the bill, now depending before the Senate for quieting certain Virginia military claims to lands, between the Little Miami and Scioto rivers, in the state of Ohio. I am the more inclined to hope that you will consider this course consistent, with that respect which I feel towards you both as Representing that sovereignty of which I am an humble member, as I am able to furnish, in our own Senate, a precedent in point: it is this; in the Session of 1807, of the Senate, of which I was then a member, a bill was received from the House of Delegates, for removing the seat of Justice of Ohio county, within my district; to the passage of which I was opposed. The petitioners had an agent in Richmond, who addressed a series of letters to me, in order to change my opinion, they failed to produce that effect, and I took the advice of the Senate, as to the proper direction to be given to them; and in consequence they were delivered in at the clerk's table, and there read as the argument of the petitioners. That course was considered respectful to the Senate, and to the member to whom they were addressed.

In discussing the questions growing out of the case, I shall be driven to notice some of the arguments contained in a paper, attributed to the pen of Senator Eaton, which, although altogether unofficial, has found its way into the Journal of the last Session of the Senate, No. 96.

The questions principally involved seem to be,

1st. Was Ludlow's line established by law as the western boundary of the military district, at the time when Duncan M'Arthur made the entries in question, for the holders of military warrants in 1810, between that and the line run by Roberts?

2nd. Is the line run by Roberts the proper western boundary?

3rd. If the latter, were not those entries legally made, and could Congress destroy them by any subsequent law?

The other questions involved are merely consequent on the decision of the foregoing.

First, then, as to Ludlow's line.—

In discussing the question as to Ludlow's line, Mr. Eaton falls into a mistake in fact at the very threshold. He says, (for I will make use of his own words throughout, and oppose him with authority, at least, of as much weight as his own.) He says, "in the year 1800, the United States directed the source of the Miami to be ascertained, and thence the western "boundary to be run; in pursuance of which direction, in 1802, a line was run and marked from the source of the Miami, " *to the Scioto,* which is known by the name of Ludlow's line."

Mr. Eaton's statement will be shown to be untrue, by the following official letter from the Commissioner of the Land Office, written in answer to one of the same date, by Mr. Ruggles, requesting the information it contains. I observe this mistake, in part, to be common in all the discussions I have seen, so far as respects the authority by which Ludlow's line was run. In the assertion, however, that this line was run "to the Scioto," I believe Mr. Eaton stands alone. The following is a copy of the Commissioner's letter.

Treasury Department, General Land Office, 18 *th May,* 1826.

Sir:

"In reply to your letter of this date, to know whether there was any act of Congress, or authority, given to ascertain "the source of the Little Miami in 1800, and to run a line from it to the Scioto, I have to state that there was no act "of Congress, nor were there any instructions given by the Executive Government, in 1800, for ascertaining the source "of the Little Miami, so far as I can ascertain.

"An act passed on the 2nd March, 1799, granting pre-emptions to certain persons, who had purchased lands lying "between the Great and Little Miami's, from John Cleeves Simms. In the execution of this act, Ludlow's line was run as "will appear from the inclosed extracts, No. 1. to No.— taken from the records in this office. *The line run by Ludlow, "was not extended further north than the Indian boundary.*

"With great respect, your obedient, "GEORGE GRAHAM."

To the running of this act, gentlemen, neither the United States, nor even the Surveyor General; much less the sovereign State, by you represented, was a party. It was a means adopted by Ludlow, of his own accord, to assist himself in the execution of another duty.

The extracts are from two letters of Rufus Putnam; the first dated the 6th Oct. 1801, and the other the 7th of January, 1802, and from a letter to him from Mr. Gallatin, dated the 26th of the same month. These extracts are in the hands of Mr. Ruggles, and they fully justify Mr. Graham's statement.

“Mr. Gallatin's letter directs the Surveyor General to regard, *for the present,* the line drawn from the head spring “of the Little Miami river, N 20° 20, as the boundary of the surveys of the lands of the United States.” “Here the mistake begun. The Indian country had not been explored. The Indians would not permit it. In *matter of fact,* Mr. Gallatin was mistaken in supposing that course would describe a proper boundary. He guessed at this, and was in doubt when he did so; and therefore he adds,” for the present.

This line, then, was not run by authority of any Government. No one will pretend that Mr. Gallatin was clothed with the necessary power to affect this object. Congress did not consider him so clothed, or they would not have legislated further on this subject, nor would Virginia have done so.

Ought Ludlow's line to have been considered as a proper boundary, and is it so in fact? This depends on a proper construction of the reservation in the deed of cession. On this subject Mr. Eaton says, “if the sources of these two “rivers were near each other, or on the same parallel, the common sense and plain answer would be to connect the “streams by a direct line.” But as the fact is, be contests this method of connecting them. On the same subject the Chief Justice, pronouncing the opinion of the Supreme Court, in my case says; “what is the extent of the country? The “plaintiff contends that it is the territory between the Ohio, into which the rivers empty, and a line to be drawn from “the source of the main branch of one river, to the source of the main branch of the other, and the rivers themselves “from their sources to their mouths. The Scioto is a much longer river, than the Little Miami, and the defendant has “suggested that the country reserved, may be limited by the Ohio river on one side, and a line drawn from the source of “the Miami to the Scioto, which shall be parallel with the Ohio on the other; but this suggestion has not been pressed, “and the idea it conveys is directly opposed to the words of the reserve, and the construction which has been *uniformly “given to the deed of cession, by both the contracting parties.* The territory lying between two rivers, is the whole country “from their sources to their mouths, and if no fork of them has acquired the name in exclusion of another, the main “branch to its source must be considered as the true river. Any other rule would be arbitrary, depending on caprice, “not on principle, and the *whole Legislation of Congress, we think, shows a disposition to be guided by this reasonable rule.* ” There is, then, pressed into

the service against the bill, a position which, in behalf of the United States, their Attorney General would not press in their Supreme Court; and which that Court pronounces to be in violation of the words of the Virginia reserve: to be an *arbitrary* one, *depending on caprice, and not on prineiple,* and contrary to the whole course of Congressional Legislation on the subject.

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Between these high authorities, on this part of the subject, I will not pretend to determine— *Non nobis inter tantos, &c.;* but I do insist that, by the latter, both government and people are concluded.

Second. Is the line run by Roberts the proper western boundary?

As to this subject, Mr. Eaton says, “another attempt was made in the year 1812, and in that year Commissioners “on the part of the United States were met by those of Virginia. They did not agree, however, and of course nothing was “done.” He proceeds to add, to this line of “Roberts's the Virginia commissioners never assented, and accordingly, if “the assent of that State be at all necessary, the boundary is as unfixed and as uncertain as is that of Ludlow's.”

Here, as in respect of the first line, Mr. Eaton is under a mistake of fact; which mistake, like the other, is common, in some degree, to all the discussions I have read. The commissioners of both governments, agreed on the two principal facts, the places of the sources of both rivers. They also agreed in the appointment of Roberts, and in the running and marking the line; but when they had done this, they did not assent to it as a true boundary, they claimed a line from the Scioto to the mouth of the Miami. These facts are positively proved by the report of the United States' Commissioners, dated the 28th December, 1802, they say “on the 26th of October last, we repaired to the town of “Zenia, in Green County, where we were met by Robert Porterfield and Abraham Trigg, two of the Commissioners “from the State of Virginia, in company with whom we proceeded to explore the various branches, and ascertain the “heads of the two rivers mentioned in the deed of cession, and having taken to our assistance Charles Roberts, esq. as a “surveyor, with chain carriers and a marker, have run, measured, and distinctly marked, a line from the source of a “pond or spring, the principal source or head of the main branch of the Little Miami River; north, bearing 24 degrees “and thirty minutes west, fifty-three miles and sixty chains to a similar pond or spring, being the head or principal source “of the main branch of the Scioto River.” All this they did with the Virginia Commissioners.

Here, then, is an agreement of both governments, as to the place of the sources of both rivers, and the place, on the ground of a right line, between them. The Commissioners then say, that those from Virginia did not agree to this line, but demanded one further west, as has been mentioned. They also agreed in extending Ludlow's line to the Scioto, and each reported the whole to their governments

Thus, if Ludlow's line produced to the Scioto should be determined on, they produced that, and also marked it on the ground. If a right line from source to source, they agreed in ascertaining these sources, “after measuring their “principal branches from their mouths to their heads,” and in marking that on the ground also, all this they each reported. As a matter of law, those from Virginia claimed as before mentioned. Having reported their map to each government, shewing the places where the sources of the rivers were, and the marked line between them; each government filed away the report among its public archives. That of Virginia was satisfied so far so, that altho' speculators in the west have often importuned members of the Assembly to question this line; to my knowledge, no one would ever do it.

Mr. Eaton next relies on the act of 1807. That act gave further time to make entries and surveys within the Virginia military reserve, and contained a proviso that no entry should be made on lands previously surveyed or patented; and that if any such entry should be made, and a grant obtained, the same should be absolutely null and void in law. This proviso is contained in each subsequent continuing act. Mr. Eaton contends, that this proviso extends to the surveys made by the United States' officers on the lands in question. On this question, like on every other, he is at variance with the Supreme Court. Speaking of this point, after quoting the proviso and the above question, Judge Marshall says, “we do not concur in this opinion for several reasons, the words refer to the whole military reserve, and seem intended “to apply to surveys which might be made throughout that entire tract of country, not to the lands surveyed in townships, “sections, and parts of sections by the United States, west of Ludlow's line. There were such surveys; the records of “this court shew, that many controversies were produced in that country by the mode of locating and surveying military “lands which had been adopted under the laws of Virginia; and it is not unreasonable to suppose that Congress, when “giving further time to make locations and surveys, might be disposed to cure the defects in titles already acquired, and “to prevent second locations on lands already located.”

The next question raised against the bill is under the act of 1804, which provides that Ludlow's line and its course continued to the Scioto shall be the boundary, provided Virginia shall assent to it as such within two years. Virginia never did assent, and yet Commissioner Meigs obstinately maintained, that this act established that line without that assent. Mr. Eaton is rather inclined to support this opinion, strange as it is; an opinion which is the source of all the mischief that followed. This opinion too is overruled by the Supreme Court. Having overruled this opinion when expounding the act of 1804 itself; and, when speaking of the act of 1812, the Court say “If the words of the act of 1804 were doubtful, which they are not, the act of 1812 would expound them, and shew “that not even a temporary boundary had been previously fixed The appointment of Commissioners to meet others to “be appointed by Virginia, who were to agree upon and mark the true line, and the

establishment of a temporary line “until such agreement should be made, prove incontestibly that Congress did not suppose the line to be established.

Driven from this point by this unequivocal decision, Mr. Eaton contends, that the act of 1804 gave notice of the intention of Congress, and that M'Arthur, having made his entries after 1804, to wit; in 1810, did not locate innocently, and ought not to be protected. Notice of what? Why, of a void thing. Of a willingness in Congress to establish a certain line with the assent of Virginia, and that Virginia had refused to assent. On this subject, the Court expressly say, “that “the deed of cession and its acceptance form a contrast,” and that the terms of it, as to boundary, required explanation and adjustment. “This adjustment,” say they, “was not to be made by one of the parties, but by both, and this act, of (1804) “is an essay towards it. Congress makes a proposition to Virginia by which the United States are to be bound, provided “Virginia accepts within two years. If it be not accepted within that time, the parties stand on their original rights as if “it had never been made.” Still Mr. Eaton contends, that the entries having been made after the acts of 1804 and 1807, are void by force of these acts. He seems to blame the case agreed in Doddridge's lessee vs. Thompson, and ought, for omitting to state the date of the entry, and seems to suppose the Court would have so decided, if they had known that the entries were made after the act of 1807. He again contends, that entries are but incipient things, and plainly intimates that they may be annulled by subsequent laws, and were so annulled. In answer to all this, it may be observed, that, in the case of Fletcher vs. Peck, this legislative power in a government of laws is denied; that in the case of Mason vs. Willson, an entry is adjudged to be the foundation of legal title; and further, that having expressly decided that no act of Congress prior to that of 1812, withdrew any portion of land from locations and that no law authorized the surveying of these lands as public lands, nor their sale as such, the Court speaking of the argument that the entries are void because they were made since the act of 1807; and referring to that of 1812 say, “Had the plaintiff's title been acquired “subsequent to the passage of this act (that of 1812.) there would have been much force in the objection to it; but it was “acquired before that act passed, and cannot, we think, be affected by it, Congress cannot have intended to amend, by a “legislative act, a title which was valid at the time, a?d a law which does not express that intention, ought not to have “that effect given to it by construction.” Thus, at every point, Mr. Eaton is opposing a decision of the Supreme Court. While it is said on one hand that Congress had power to curtail and grant away the district, and that in fact they did withdraw part of it, the Court, admitting the power, deny that any law exists which can bear that construction—while it is contended that the survey of townships and sections on the premises within the district was authorized by Congress, and the sale of the land at Cincinnati, the Court decides that no law authorized either the one or the other. Mr. Eaton's construction of the reserve, as to the boundary, is also overruled. Further, when he contends that the entries are void, because made *after the act of* 1807, the Court say, that because made *before the act of* 1812, they are valid and are not effected by the letter or spirit of that act.

Mr. Eaton is just as unfortunate in his facts as in his argument. When he asserts that in 1800, Congress directed the source of the Little Miami to be ascertained, and a line run to the Scioto, and that this direction produced what is now called Ludlow's line, he is contradicted by the Commissioner, and is again contradicted by the Commissioner when he says that the line was *run to the Scioto.* When again he asserts, that the Commissioners of the United States did *not agree* , I submit whether the report of the United States' Commissioners does not contradict him. Speaking of the agreed case, 3 says the principal point in dispute was conceded; that it was agreed that Robert's line was the *true* one. If, by this, he means to say it was agreed to be the true western boundary, then I appeal to the document itself, to shew that this statement also, is erroneous in point of fact. The agreed case admits that Roberts' line, appearing on the map, furnished by the commissioner, is a *true* line running from source to source of the rivers in question; and that the sources of these rivers are truly laid down on those maps; but whether this was the *true* line bounding the district or not was a question of law, the decision of which depended on the construction of the reserve in the deed of cession, and the question presented to the Court to decide on the agreed case was, whether, as the Commissioner and Mr. Eaton contend, Ludlow's line, or one to be drawn from the source of one river to that of the other, as we contend, was the proper boundary of the district; and, in the decision of which, as well as in the construction of the acts of 1807, and of 1812, and of every other legal proposition urged by Mr. Eaton, he and the Supreme Court, unfortunately, happen to differ in opinion. If I understand him right, Mr. Eaton elsewhere says, in substance, that the sources of the rivers and the place of Roberts' line, and the fact that the lands in question lie between the two lines, constituted the subject of dispute. If this is his meaning, then he is misinformed. Not one of these facts was in dispute between the Commissioners and myself, and we had many conversations Nor was there ought in dispute but his construction of the acts of Congress of 1804, 1807, and 1812, but particularly of 1804, which he insisted absolutely established Ludlow's line, and the course of it produced to the Scioto.

To enable the Court to decide between us this legal question, was the case agreed made, and with the exception of my title papers, and the usual admission of the lease entry and ouster, &c. the case is wholly Mr. Meig's own case. He possessed all the official documents to prove conclusively every fact found; but in making an agreed case, as in a special verdict, not the evidence alone, but also the facts proved by that evidence, must be stated, or the Court has no authority to decide. The act of 1800 furnishes the great land system of the United States. By this, as by all subsequent laws, the public surveyors are required to lay down all water courses on their return among other things. The Surveyors who were directed by Mr. Gallatin to survey the public lands from the west to Ludlow's line, of course, as their surveys crossed both rivers, were under the necessity of laying down the sources of both rivers and Ludlow's line. They did so, and on their plats the Sciota is laid down from its source to Ludlow's line, when produced to it. They found Ludlow's line marked on the ground to

the Scioto by the Commissioners under the act of 1812, and they run to this line, and on the map of their works in the Land Office, it appears as their eastern boundary. They also found, where they found the head of the Scioto, Roberts's marked line from thence to the Miami on the ground; this they also laid down on their return. The public surveys west and north, and adjoining there, exhibit the sources of the rivers in the same way. From all these official documents, put together as a whole, was Hough and Bournes's map made up, which is furnished by the land office to the Senate, as a representation of all the land surveys in the country. This map, of course, made up from actual survey in every respect, exhibited the rivers, their sources, the military surveys, and those of the United States to Ludlow's line, in one view: shewing that the premises in question lie between the two rivers and the two lines, and precisely how they severally conflict with each other. This map is made a part of the case agreed, as exhibiting all the difficult detached surveys in connection. On these detached documents are notes of explanation, figures and shades, all of which are admitted to be true, just as the Commissioner made them. Even the fact that the lands in the disputed triangle had been offered for sale at Cincinnati, but not sold, before the date of M'Arthur's entries, was stated by him. All that he furnished and stated, was admitted by me for no o?her reason than that they were true, and proved by the record evidence. I repeat, there never was one single fact in dispute between us. On the slightest inspection of the agreed case, and the map, the truth of all this is obvious.

It was never disputed, that I ever heard of, that Roberts's line was a true one, between the real sources of the two rivers, until after the decision of my case; nor then, except by those three interested individuals who addressed you in three memorials against M'Arthur's claim, in no two of which is there any sort of agreement in point of fact.

Mr. Eaton contends that the reservation of Virginia is nothing more than the expression of a wish or a declaration of trust; and that even as to boundary, having transferred soil and jurisdiction, she need not be consulted, and had no right to intermeddle. Can the Senators representing her sovereignty admit this doctrine, and restrict their government to the mere right of wishing? The plain state of the case is this: M'Arthur, and those who employed him, claim under the reservations in the deed of cession, and the others under the United States directly. One claim or the other must give way. The proper umpire between them, the Supreme Court of the United States, has decided the law in every way in favour of the Virginia claimants. They decided that the entries made before the act of 1812, are valid, and are not effected by that or any other law of Congress, and the entries in question were so made. They have decided that the district extends to the sources of the two rivers, and to a right line between them; and the public record shows, conclusively, that all the lands in question lie between those rivers; and is it not the duty of Virginia to see that claims under her laws, thus circumstanced and decided upon, should be protected? And can her Senators withhold

that protection? It seems to me that, should the boundary, or these claims, be thus abandoned, the Government of Virginia would be precluded by that act from the right to complain, and that the right of wishing would, alone, be retained. If I am right in this, which is respectfully submitted, a claim for a loss of title, would result against the state of Virginia; and would be recoverable: for that government, like that of England; and like no other government in Christendom, permits itself to be sued in its own courts, and justice to be meted to the citizen, by the same rules of law and equity, which govern the decisions of cases between man and man.

The general aspect of Mr. Eaton's argument, when compared with that of the singular enough. The first proves incontestibly, if true, that the United States having the power to from beginning to end with bad faith towards Virginia; while the latter proves what the Court of Congress has been fair, liberal, and honourable, and fully vindicate the good faith of Virginia, and, as I know in that state, 4 Congress determined the question, and that it was the duty of Government to protect its purchasers, *by buying out the Virginia claimants then* , if that could be done on reasonable terms. To this end they made it the duty of the President, to inform them what was the value of the land without improvements, and on what terms we would relinquish our claims. The President caused the lands to be valued by agents of his own, over whose appointment the claimants had no control, I, your constituent, had not even notice of the time of their meeting. The claimants were written to by the Commissioner, to know on what terms they would relinquish their claims, to which they promptly answered.

The whole difference had arisen out of the mistake of one officer of Government, in a matter of fact, and of another, in a matter of law. The latter mistake had a great effect. By the time the lands were first offered for sale, at Cincinnati, the country between the two rivers had become settled, and it was known that Ludlow's line would not touch the source of the Scioto, and it was feared that the Virginia claim would extend to that source, and the consequence was, that not one foot of the land in the triangle was sold; but when the Commissioner refused grants to M'Arthur, and gave on a list of the surveys, his reasons in writing for so doing, i. e. that the lands lay west of the line established by the act of 1804, a confidence in this opinion brought the same lands into market, and so alarmed the Virginia claimants, that, with the exception of M'Arthur, they all withdrew their entries, being advised that it was a hopeless business to contend with the United States in their own Courts.

The case presented a fair subject for a compromise, and should the present Congress now reverse the decision of the last, then we will have been trifled with, to the loss of three years of valuable time, within which, I fear, the presumption of abandonment, may be raised to the exertion of the equitable claims, as against some of the earliest purchasers of Government.

Considering, gentlemen, that this is an attempt at a compromise commenced by a law of Congress, with a view to acquit the Government of a duty towards its own purchasers; that the claimants have accepted the propositions made them; that, owing to the failure of two bills in the Senate, for want of time to act on them, and considering the time the present bill has been in possession of that body; I hope I have good grounds for thinking myself entitled to a decision, one way or the other, during the present Session. If the bill be now rejected, I will feel at liberty to execute my judgment, by ousting the Government purchasers.

Believe me, gentlemen, to be, with due respect, Your obedient and very humble servant, P. DODDRIDGE.

Honorable Josiah Washington City Hon Josiah S. Johnston Hon Josiah Johnston Washington City DC

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acceptance ," say they it. Congress makes a ?ccepts within two years. If it be no had never been made." Still Mr. Eaton contends, the are void by force of these acts. He seems to blame the case agreed in lessee vs. Thompson, and omitting to state the date of the entry, and seems to suppose the Court would have so decided, if they had known that the entries were made after the act of 1807. He again contends, that entries are but incipient things, and plainly intimates that they may be annulled by subsequent laws, and were so annulled. In answer to all this, it may be observed, that, in the case of Fletcher vs. Peck, this legislative power in a government of laws is denied; that in the case of Mason vs. Willson, an entry is adjudged to be the foundation of legal title; and further, that having expressly decided that no act of Congress prior to that of 1812, withdrew any portion of land from locations and that no law authorized the su?veying of these lands as public lands, nor their sale as such, the Court speaking of the argument that the entries are void because they were made since the act of 1807; and referring to that of 1812 say. "Had the plaintiff's title been acquired "subsequent to the passage of this act (that of 1812) there would have been much force in the objection to it; that it was "acquired before that act passed, and cannot, we think, be affected by it, Congress cannot have intended to amend, by a "legislative act, a title which was valid at the time, a?d a law which does not express that intention, ought not to have "that effect given to it by construction." This, at every point, Mr. Eaton is opposing a decision of the Supreme Court. While it is said on one hand that Congress had power to curtail and grant away the district, and that in fact they did withdraw part of it, the Court, admitting the power, deny that any law exists which can bear that construction— while it is contended that the survey of townships and section on the premises within the district was authorized by Congress, and the sale of the land at Cincinnati, the Court decides that no law authorized either the one or the other. Mr. Eaton's construction of the reserve, as to the boundary, is also overruled. Further, when he contends that the entries are void, because made *after the act of*

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